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2           UNITED STATES DISTRICT COURT  
3           SOUTHERN DISTRICT OF NEW YORK  
4

5           VICTORIA MALONE,  
6           Plaintiff,  
7           vs.  
8

9           TOWN OF CLARKSTOWN, WAYNE BALLARD in his  
10          Personal and official capacity as  
11          Clarkstown Highway Superintendent; FRANK  
12          DIZENZO, in his personal and official  
13          Capacity as Clarkstown Highway Superintendent;  
14          ANDREW LAWRENCE, in his personal and official  
15          capacity; DAVID SALVO, in his personal and  
16          official capacity; ROBERT KLEIN, in his  
17          personal and official capacity; TUCKER  
18          CONNINGTON, in his personal and official  
19          capacity; and BRIAN LILLO, in his personal and  
20          official capacity,

21           Defendants.  
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24           REMOTE DEPOSITION OF ROBERT KLEIN  
25

26           Friday, December 4, 2020  
27

28           Reported by:  
29           LISA M. MURACO  
30           JOB NO. 187335  
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3               Friday, December 4, 2020  
4               10:00 a.m.  
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7               REMOTE Deposition of ROBERT KLEIN,  
8               held VIA ZOOM, before LISA M. MURACO, a  
9               Notary Public of the State of New York and  
10              New Jersey.

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2               A P P E A R A N C E S:  
3               (VIA VIDEOCONFERENCE)  
4  
5               POLLOCK COHEN  
6               Attorneys for Plaintiff  
7               60 Broad Street  
8               New York, New York 10004  
9               BY: STEVE COHEN, ESQ.  
10  
11  
12              WILSON ELSER MOSKOWITZ EDELMAN & DICKER  
13              Attorneys for Defendants Town of  
14              Clarkstown, Tucker Connington, and David  
15              Salvo  
16              1133 Westchester Avenue  
17              White Plains, New York 10604  
18              BY: JOHN FLANNERY, ESQ.  
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2               A P P E A R A N C E S (CONTINUED):  
3               (VIA VIDEOCONFERENCE)  
4  
5               LAWRENCE A. GARVEY & ASSOCIATES  
6               Attorneys for Defendant Frank DiZzenzo  
7               235 Main Street  
8               White Plains, New York 10601  
9               BY: LAWRENCE GARVEY, ESQ.  
10  
11  
12              McDERMOTT & McDERMOTT ATTORNEYS AT LAW  
13              Attorneys for Defendant Robert Klein  
14               293 Route 100  
15               Somers, New York 10589  
16               BY: MICHAEL McDERMOTT, ESQ.  
17  
18  
19              LYONS McGOVERN  
20              Attorneys for Defendant Brian Lillo  
21               399 Knollwood Road  
22               White Plains, New York 10603  
23               BY: KYLE McGOVERN, ESQ.  
24  
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2               A P P E A R A N C E S (CONTINUED):  
3               (VIA VIDEOCONFERENCE)  
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6  
7               ALSO PRESENT:  
8               Helen He, Intern for Pollock Cohen  
9               Leslie Kahn, Town Attorney, Town of Clarkstown  
10              Charles Connington, Town of Clarkstown Highway  
11              Department  
12              Frank DiZzenzo, Clarkstown Highway  
13              Superintendent  
14  
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1 R. KLEIN  
 2 believe I said: Hockey fight. And I grabbed  
 3 the back of her sweatshirt jacket and I pulled  
 4 it up over her head.

5 Q. Did this happen one time or more  
 6 than one time?

7 A. I believe that was the only time.

8 Q. Okay.

9 So if she testified that it happened  
 10 two times?

11 A. Yeah, I don't remember a second  
 12 time.

13 Q. Okay.

14 Were you intoxicated when this  
 15 happened?

16 A. No.

17 Q. Okay.

18 Is pulling a woman's shirt over her  
 19 head during the workday, workplace appropriate  
 20 behavior?

21 MR. McDERMOTT: Objection.

22 MR. FLANNERY: Objection.

23 MR. McDERMOTT: It wasn't -- there  
 24 was not testimony that he pulled her shirt  
 25 over her head.

1 R. KLEIN  
 2 MR. COHEN: What -- forgive me.

3 BY MR. COHEN:

4 Q. How did you describe it, Mr. Klein?

5 A. Hockey fight.

6 Q. He's pulling the shirt over. What  
 7 she said -- what you read from her notes.

8 Prior, he had ripped my shirt off  
 9 using a hockey move, May 3rd.

10 A. That's not correct.

11 Q. Okay.

12 So what is correct?

13 A. I pulled her sweatshirt jacket up  
 14 over her head.

15 Q. Okay.

16 Was she wearing anything underneath?

17 A. Yeah, she had a shirt on.

18 Q. She had a shirt on?

19 A. Yes.

20 Q. And if she testified that she didn't  
 21 have a shirt on?

22 A. She testified she did not have a  
 23 shirt on?

24 Q. Yeah, that it was just her bra. A  
 25 sports bra.

1 R. KLEIN

2 MR. McDERMOTT: Objection.

3 MR. FLANNERY: Objection.

4 MR. McDERMOTT: I'm confused by the  
 5 questioning. Because the witness is  
 6 testifying that she -- that there was a  
 7 sweatshirt jacket. Okay.

8 And you're -- it sounds like you're  
 9 questioning that she only had a bra on  
 10 under the sweatshirt jacket.

11 MR. COHEN: Yeah. I'm sorry.

12 MR. McDERMOTT: Clarify the  
 13 questioning.

14 MR. COHEN: Sure.

15 BY MR. COHEN:

16 Q. If Tori testified that she only had  
 17 a sports bra on underneath --

18 MR. McDERMOTT: Underneath what?

19 MR. COHEN: That jacket, that  
 20 sweatshirt jacket.

21 Q. Would you have any reason to  
 22 disagree with her?

23 A. Yeah. Who only wears a sports bra  
 24 under a sweatshirt jacket?

25 Q. Okay.

1 R. KLEIN

2 Is it -- in either case, is pulling  
 3 someone's sweatshirt -- you pulled it over her  
 4 head?

5 A. Yes, I did that.

6 Q. You did that.

7 In a hockey move?

8 A. Yes.

9 Q. Is that workplace appropriate  
 10 behavior?

11 MR. FLANNERY: Objection.

12 MR. McDERMOTT: Objection.

13 A. Probably not.

14 Q. Did you view it as a joke?

15 A. Yes, we were horseplaying.

16 Q. Did she view it as a joke?

17 A. We were horseplaying.

18 Q. Okay. All right.

19 Third paragraph, if you read that  
 20 aloud.

21 A. The Brian Lillo one?

22 Oh, no, no, no. Cutting down --

23 Q. Above Brian Lillo.

24 A. (As read): Cutting last two pine  
 25 trees on Kendall, he tackled me to the ground

1 R. KLEIN  
 2 and slapped my butt multiple times.  
 3 Q. Do you have any recollection of  
 4 that?  
 5 A. Yes.  
 6 Q. What happened?  
 7 A. She had my rake. I wanted my rake  
 8 back. She refused to give it back. So I ran  
 9 up to her to get it. And she started running  
 10 away.  
 11 And she had her sweatshirt jacket on  
 12 again. I grabbed the hood. She fell to the  
 13 ground.  
 14 Q. And then?  
 15 A. It was in the yard.  
 16 Q. And then what happened?  
 17 A. And then she started kicking and  
 18 screaming. And I sat on her legs and I smacked  
 19 her butt.  
 20 Q. Okay.  
 21 Horseplay?  
 22 A. Yup.  
 23 Q. Okay.  
 24 Did she complain about it?  
 25 A. No.

1 R. KLEIN  
 2 Number 5.  
 3 (Exhibit 5, photo, marked for  
 4 identification.)  
 5 MR. COHEN: And I don't remember --  
 6 forgive me. I got to look at it.  
 7 What the -- this doesn't have --  
 8 this is called Exhibit B, and I believe  
 9 this is from the original complaint.  
 10 BY MR. COHEN:  
 11 Q. Do you recall -- have you ever seen  
 12 this photo, before?  
 13 A. Yes.  
 14 MR. McDERMOTT: Just put it up on  
 15 the screen.  
 16 MR. COHEN: Oh, I'm sorry.  
 17 Helen, could you put it up on the  
 18 screen.  
 19 I'm sorry. Go ahead.  
 20 Q. Have you ever seen this photo,  
 21 before?  
 22 A. Yes.  
 23 Q. Where did you see it?  
 24 A. With my attorney.  
 25 Q. Okay.

1 R. KLEIN  
 2 Q. She didn't say anything to you?  
 3 A. She might have said: Blue, stop.  
 4 Q. Okay.  
 5 But this was all in good fun?  
 6 A. Yes.  
 7 Q. Workplace appropriate behavior?  
 8 MR. McDERMOTT: Objection.  
 9 MR. FLANNERY: Objection.  
 10 A. Probably not.  
 11 Q. I'm sorry. I didn't hear the  
 12 answer.  
 13 A. Probably not.  
 14 Q. Okay.  
 15 Pivoting a bit.  
 16 What's a lopper, Mr. Klein?  
 17 A. A lopper is for trimming tree  
 18 branches.  
 19 Q. And how does it do that?  
 20 Is it a blade or is it something  
 21 else?  
 22 A. It's like a trimmer. It's sort of  
 23 like a pair of scissors.  
 24 Q. Okay.  
 25 I'm going to show you Exhibit

1 R. KLEIN  
 2 Do you know whose leg it is?  
 3 A. That's Tori's.  
 4 Q. And you see the scratch mark in the  
 5 middle?  
 6 A. Yes.  
 7 Q. Do you know how it came about?  
 8 A. Yes.  
 9 Q. How did it come about?  
 10 A. It wasn't with a pair with loppers.  
 11 It was with a pole saw.  
 12 Q. Okay.  
 13 So what happened?  
 14 A. She was standing there. I had the  
 15 pole saw in my hand. She has all these little  
 16 strings coming off her jeans that she wore  
 17 every day. Big holes in them.  
 18 And I went to grab one of the little  
 19 strings, and I believe she turned a little bit  
 20 and the blade caught her leg.  
 21 Q. Okay.  
 22 So it was an accident?  
 23 A. Yes.  
 24 Q. What were you doing grabbing the  
 25 strings?



1 R. KLEIN

2 BY MR. COHEN:

3 Q. Would you say to somebody, come  
4 closer, when you're about to use a chainsaw?

5 MR. FLANNERY: Objection.

6 MR. McGOVERN: Objection.

7 MR. COHEN: I'm sorry. What you did  
8 say? I didn't hear your answer.

9 A. No.

10 Q. Why wouldn't you?

11 A. Because it could be, possibly be  
12 dangerous.

13 Q. Okay.

14 I want to show you Exhibit 1B, which  
15 is another part of the amended complaint.

16 Okay.

17 I want to show you paragraph 42.

18 (Exhibit 1B, part of amended  
19 complaint, marked for identification.)

20 BY MR. COHEN:

21 Q. Could you read that aloud, please.

22 A. (As read): On one occasion, while  
23 Lillo was removing a tree, he deliberately  
24 positioned Ms. Malone so that she would be hit  
25 by wood chips and shavings discharged by his

1 R. KLEIN

2 chainsaw running at high speed. This was not a  
3 careless or negligent act. It was a deliberate  
4 physical assault.

5 McDermott, who saw the incident,  
6 taunted Ms. Malone by asking her if she needed  
7 help getting wood chips and dust out of her  
8 shirt.

9 Lillo also in 2018, harassed,  
10 humiliated, and verbally abused Ms. Malone by  
11 stating in front of the rest of the crew, in  
12 substance, that only a mentally challenged  
13 person would hit on her.

14 Q. Do you recall an incident with  
15 Mr. Lillo involving a chainsaw?

16 MR. McGOVERN: Objection.

17 MR. FLANNERY: Objection.

18 MR. McDERMOTT: Objection. An  
19 incident involving a chainsaw. That's so  
20 broad, Steve.

21 BY MR. COHEN:

22 Q. Okay.

23 Let's go back to the very first  
24 sentence in number 42.

25 Do you remember an incident

1 R. KLEIN

2 involving Lillo removing a tree and  
3 deliberately positioning Ms. Malone so that she  
4 would be hit by wood chips and shavings?

5 A. No.

6 MR. McGOVERN: Objection.

7 Q. Okay.

8 So let's go to Exhibit Number 8,  
9 which is Town 4441 and 4534. And this is a  
10 transcript of an interview you gave in July of  
11 2018.

12 (Exhibit 8, interview transcript,  
13 marked for identification.)

14 MR. McDERMOTT: I'm sorry. What  
15 page, Steve?

16 MR. COHEN: I'm going to go there.

17 Q. Do you recall -- have you looked at  
18 this document before?

19 A. The interview?

20 Q. Yeah.

21 A. Very briefly.

22 Q. Did you look at it before coming  
23 here today?

24 A. Very briefly.

25 Q. Okay.

1 R. KLEIN

2 Why don't we go down to -- I think  
3 it's page 19 of this document, Town 4459.

4 A. Page 19, you said?

5 Q. Yeah, 19.

6 Read to yourself from the top.

7 A. Okay.

8 (Document review.)

9 Q. In fact, why don't you go back a  
10 page so you can see the context. Read to  
11 yourself starting on page 18.

12 (Document review.)

13 Q. Okay.

14 Have you read that page?

15 A. I read 18.

16 Q. Okay. Now, I want you to read 19.

17 (Document review.)

18 A. Okay.

19 Q. Do you remember giving this  
20 testimony?

21 A. Not particularly, no.

22 Q. So now that you've had a chance to  
23 reread it, do you recall the incident any  
24 better?

25 MR. McGOVERN: Objection.



1 R. KLEIN  
 2 orders.  
 3 Q. Okay.  
 4 Did you intervene in this situation,  
 5 where Brian said: Come closer?  
 6 MR. McGOVERN: Objection.  
 7 MR. FLANNERY: Objection.  
 8 A. No, I don't believe I did. No.  
 9 Q. Okay.  
 10 And why was that?  
 11 A. I couldn't give you an answer right  
 12 now. I don't really recall.  
 13 Q. Do you recall if Tori was visibly  
 14 upset by -- withdrawn.  
 15 First, do you know if Tori got hit  
 16 by chips during this incident?  
 17 A. Yes.  
 18 Q. Was she visibly upset by it?  
 19 A. I do believe. I don't remember her  
 20 exact reaction.  
 21 Q. But you believe she was upset?  
 22 A. I do believe.  
 23 (Multiple speakers.)  
 24 Q. And what makes you -- I'm sorry. I  
 25 cut you off. I apologize.

1 R. KLEIN  
 2 Q. Okay.  
 3 If Tori testified that he taunted  
 4 her by asking if she needed help getting the  
 5 shavings out of her shirt, would that surprise  
 6 you?  
 7 MR. FLANNERY: Objection.  
 8 MR. McGOVERN: Objection.  
 9 MR. McDERMOTT: Objection.  
 10 A. Yes.  
 11 Q. It would surprise -- why would it  
 12 surprise you?  
 13 MR. FLANNERY: Objection.  
 14 A. Why would it surprise me?  
 15 Q. Yeah.  
 16 A. I don't believe Chris would say  
 17 that.  
 18 Q. Okay.  
 19 And do you have any recollection of  
 20 who else was there?  
 21 A. I -- no. I believe it was me,  
 22 Chris, and Brian. I think Tori might have been  
 23 driving the roll-off that day.  
 24 Q. Okay.  
 25 Doesn't the town have a policy to

1 R. KLEIN  
 2 A. I don't know.  
 3 Q. Okay.  
 4 What makes you recollect that she  
 5 was upset?  
 6 A. I think she just, like, yelled at  
 7 him or something. I don't know.  
 8 Q. Okay.  
 9 And what did you do?  
 10 A. I do not remember.  
 11 Q. Do you remember your reaction at  
 12 all?  
 13 A. No.  
 14 Q. Did you laugh?  
 15 A. I don't know.  
 16 Q. Okay.  
 17 If you testified during this 2018  
 18 interview that you laughed, would that refresh  
 19 your recollection?  
 20 MR. FLANNERY: Objection.  
 21 A. No.  
 22 Q. Okay.  
 23 Did Chris McDermott see this, as  
 24 well?  
 25 A. I don't recall who was there.

1 R. KLEIN  
 2 wear safety equipment when operating near a  
 3 chainsaw?  
 4 MR. FLANNERY: Objection.  
 5 A. I don't know.  
 6 Q. Would it make sense to you, as a  
 7 foreman, to have a policy of people wearing  
 8 hard hat and safety glasses?  
 9 A. Yes.  
 10 Q. Okay.  
 11 And she was wearing neither,  
 12 correct?  
 13 MR. FLANNERY: Objection.  
 14 A. I believe she wasn't.  
 15 Q. Okay.  
 16 In fact, you testified on page -- if  
 17 you look at 4465, that she was wearing neither?  
 18 A. Okay.  
 19 Q. Was Brian Lillo's calling Tori to  
 20 come closer while he was operating a chainsaw  
 21 appropriate workplace behavior?  
 22 MR. FLANNERY: Objection.  
 23 MR. McGOVERN: Objection.  
 24 MR. McDERMOTT: Objection.  
 25 A. Probably not.



1 R. KLEIN  
 2 trees.  
 3 Q. The only people in the highway  
 4 department?  
 5 A. Yes, that go up in the bucket truck  
 6 and cut trees on a daily basis.  
 7 Q. Have you ever seen a certificate of  
 8 some sort, a certification of some sort?  
 9 A. No.  
 10 Q. Did anybody tell you they were the  
 11 only two people certified?  
 12 A. Did anyone tell me? No.  
 13 Q. In fact --  
 14 A. I knew going into the tree crew,  
 15 they were the only two.  
 16 Q. You knew that how?  
 17 A. Just from being at the highway  
 18 department.  
 19 Q. Okay.  
 20 Do you recall Tori ever going up in  
 21 the bucket?  
 22 A. I believe once or twice, just to  
 23 check it out.  
 24 Q. Was she certified?  
 25 A. To go up in the bucket, I believe

1 R. KLEIN  
 2 you don't have to certified.  
 3 Q. To your knowledge, what do you have  
 4 to be certified to do?  
 5 A. Actually, to do it at the highway  
 6 department, you don't have to be certified. To  
 7 cut for O & R, you have to be certified.  
 8 Q. We're not talking about O & R here,  
 9 are we?  
 10 A. No.  
 11 Q. So what does Mr. DiZzenzo's memo  
 12 about Mr. Lillo being certified on operation of  
 13 our tree truck mean?  
 14 MR. FLANNERY: Objection.  
 15 A. To be honest, I don't know.  
 16 Q. Means nothing, doesn't it?  
 17 A. You don't have been certified to go  
 18 up in a tree truck, as far as I know.  
 19 Q. Thank you. Okay.  
 20 Bear with me. I'm trying to move  
 21 ahead quickly.  
 22 A. Okay.  
 23 Q. Did Mr. Salvo and Ms. Malone have  
 24 any issues with each other in your presence?  
 25 MR. McDERMOTT: Objection.

1 R. KLEIN  
 2 MR. FLANNERY: Objection.  
 3 A. Issues in my presence?  
 4 Q. Yeah.  
 5 Do they get along?  
 6 A. There were times they did not get  
 7 along.  
 8 Q. Had they been good friends?  
 9 MR. FLANNERY: Objection.  
 10 A. At times, yes.  
 11 Q. Do you have any idea if anything  
 12 happened between them?  
 13 A. I don't know what happened between  
 14 them.  
 15 Q. Do you know if Mr. Salvo had any  
 16 interest in Tori romantically?  
 17 MR. FLANNERY: Objection.  
 18 A. I have no idea.  
 19 Q. He never said anything to you about  
 20 it?  
 21 A. No.  
 22 Q. Did she ever say anything to you  
 23 about Dave Salvo?  
 24 A. No.  
 25 Q. Okay.

1 R. KLEIN  
 2 Let's go back -- we're going to just  
 3 finish it up. I want to show you a couple more  
 4 videos.  
 5 MR. COHEN: Exhibit 10, please,  
 6 Helen.  
 7 (Exhibit 10, video, marked for  
 8 identification.)  
 9 MR. COHEN: This is a video. And  
 10 here we go.  
 11 (Video playing.)  
 12 BY MR. COHEN:  
 13 Q. Had you seen this video before?  
 14 A. Yes, from my attorney.  
 15 Q. Okay.  
 16 Do you know who took the video?  
 17 A. No. I would guess -- no, I don't  
 18 know.  
 19 Q. Okay.  
 20 Were you present when it was filmed?  
 21 A. I do not recall this.  
 22 Q. Who is in the video?  
 23 A. Dave Salvo.  
 24 Q. And what's going on?  
 25 A. He's doing squats with a chainsaw